

EPA's Action Development Process - A Brief Overview

Angela Hofmann
Director of Regulatory Coordination for the Office of
Chemical Safety and Pollution Prevention (OCSPP)

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Road Map for the Presentation

Objective:

- Provide a basic overview of the process used within EPA to develop various regulatory related actions.

Agenda:

- EPA's Regulatory Production
- EPA's Action Development Process (ADP)
 - Key Milestones in the development of an action.
 - Considering technical standards in the development of an action.

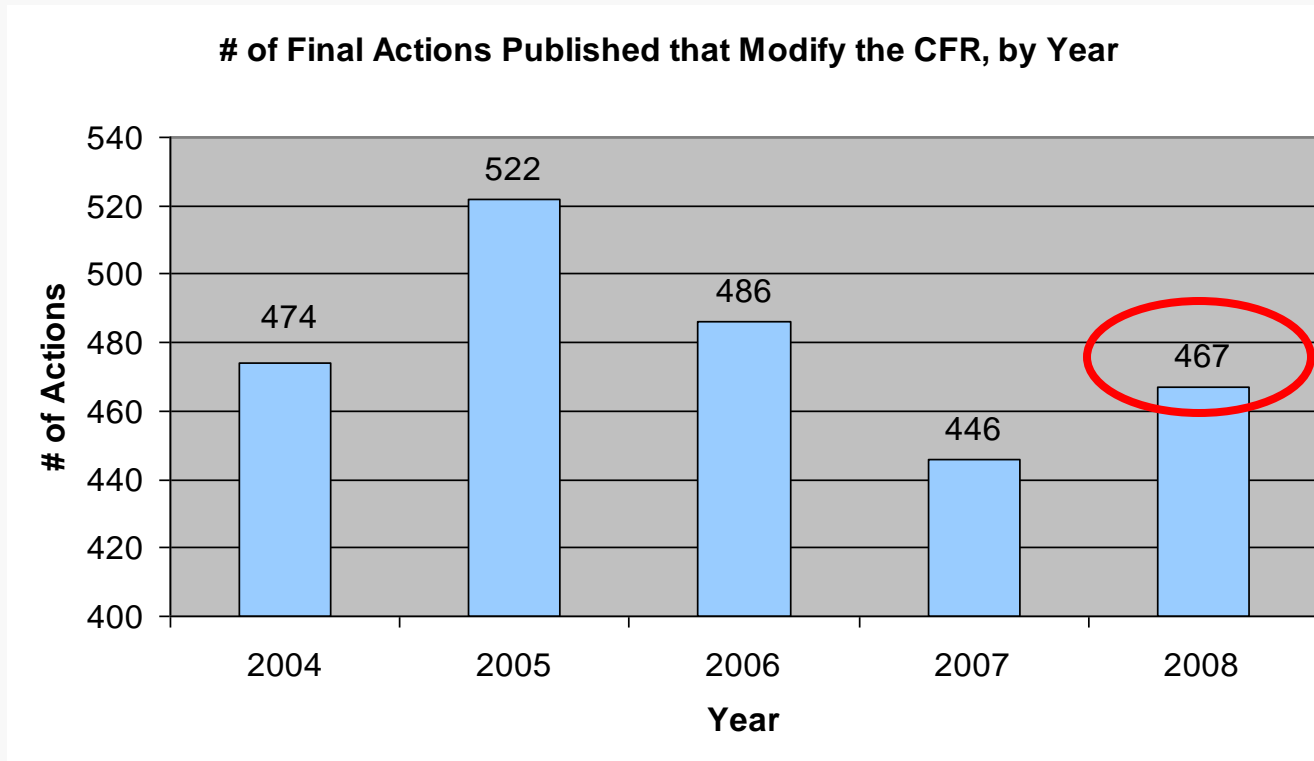
Regulatory Related Actions

- Defined -

- In this context, the term “action” is used in its broadest sense, and is intended to include
 - rules (or regulations)
 - policy statements
 - risk assessments
 - guidance documents
 - models that may be used in future rulemakings
 - Reports to Congress that are statutorily mandated
 - strategies that are related to regulations

EPA's Regulatory Production - Total Volume -

EPA is 2nd in volume of actions (16% of federal output)



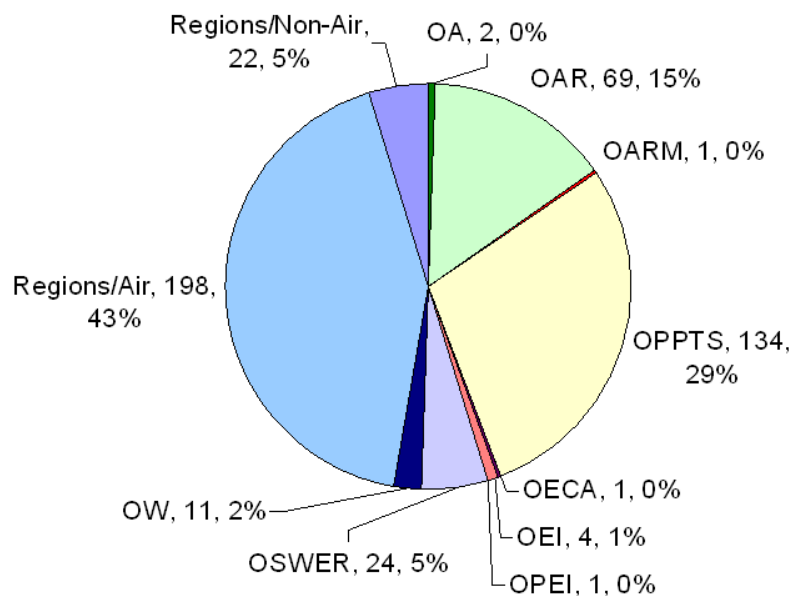
Includes actions such as State Implementation Plans (SIPs), pesticide tolerances, and other routine actions that are not signed by the EPA Administrator.

EPA's Regulatory Production

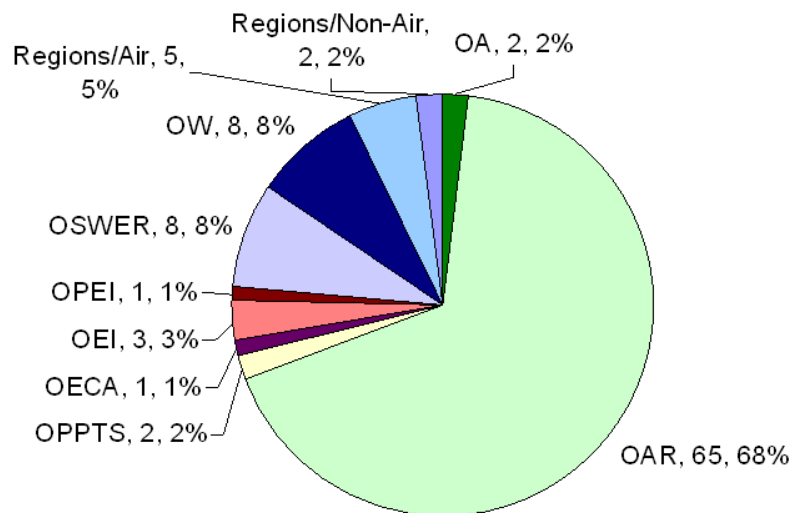
- Volume by Office -

- Largest volume of CFR changes are from Air & Radiation (OAR)
- OCSP (formerly "OPPTS") has the SECOND largest volume of CFR changes
- A subset of actions receive Administrator signature and cross-agency review

2008 Final Actions that Modify the CFR, by Office
(Total: 467 actions)



Subset Signed by the Administrator, by Office
(Total: 97 actions)



EPA's Regulatory Production

- Benefits and Costs -

Estimates of the Total Annual Benefits & Costs of Major Federal Rules

October 1, 1997 – September 20, 2007 (billions of 2001 dollars)

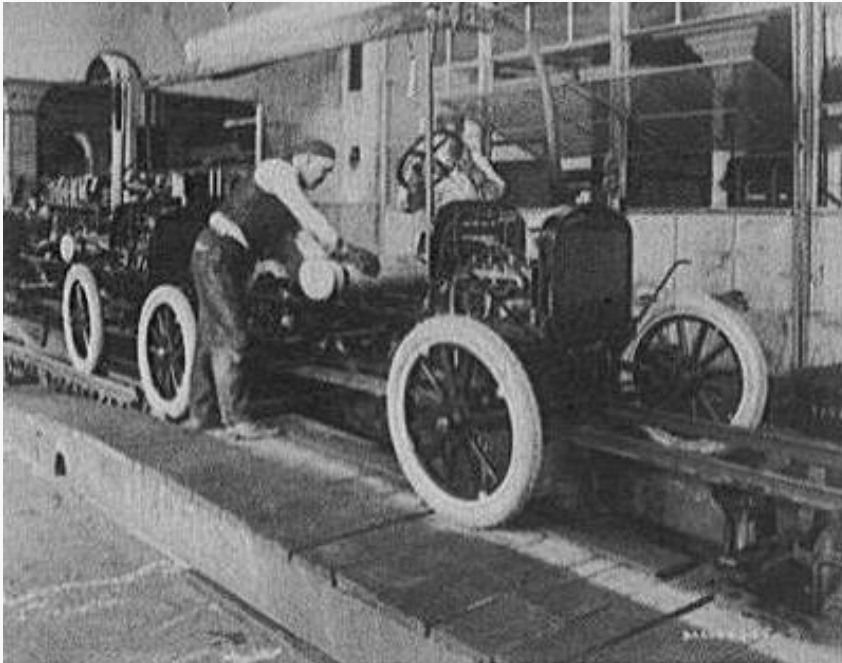
	# of Rules	Benefits	Costs
EPA	40	\$83.3 – 592.6	\$32.3 – 35.1
Health/ Human Services	18	\$20.6 – 32.9	\$3.8 – 4.3
Transportation	15	\$10.4 – 18.1	\$5.0 – 8.8
Agriculture	6	\$0.9 – 1.3	\$1.0 – 1.4
Labor	6	\$1.1 – 4.2	\$0.4 – 0.5
Energy	5	\$4.8 – 5.2	\$3.0 – 3.1
Education	1	\$0.6 – 0.8	\$0.3 – 0.6
Housing / Urban Dev.	1	\$0.2	\$0.2
Justice	1	\$0.3	\$0.1
Total	93	\$122.2 – 655.6	\$46.2 – 53.9

Source: Office of Management and Budget. *Draft 2008 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, pg. 4. See:

http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html.

The Action Development Process (ADP)

- EPA's Production Line -

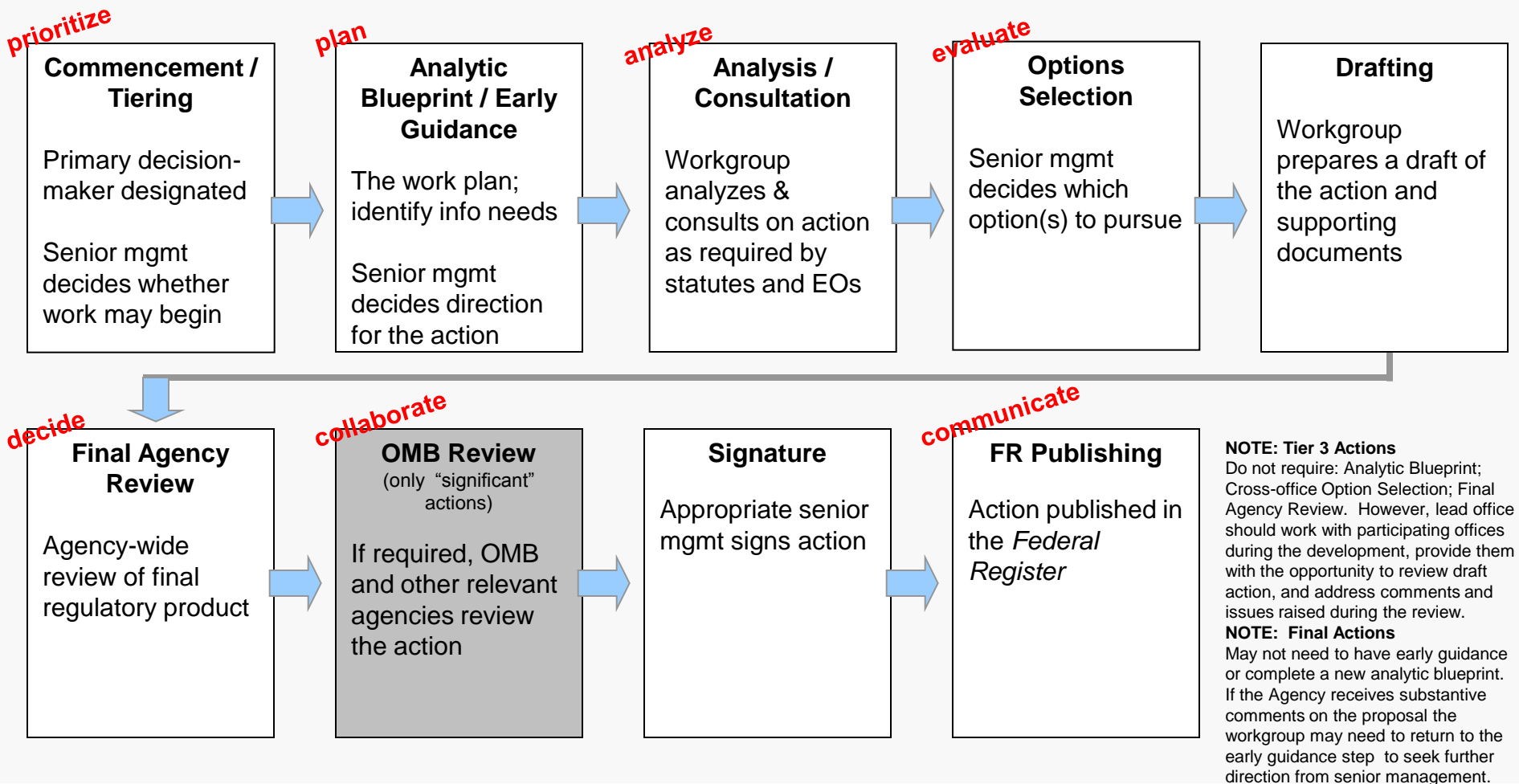


Source: "Assembly." Detroit Publishing Company, 1923 May 7. Touring Turn-of-the-Century America: Photographs from the Detroit Publishing Company, 1880-1920, Library of Congress. See: http://www.americaslibrary.gov/jb/civil/jb_civil_ford_3_e.html

- Prioritize
- Plan
- Analyze
- Evaluate
- Decide
- Collaborate
- Communicate

The ADP

ADP for Tier 1 and Tier 2 Actions – NPRM and Final



The ADP

- Commencement / Tiering -

prioritize

Commencement / Tiering

Primary decision-maker designated

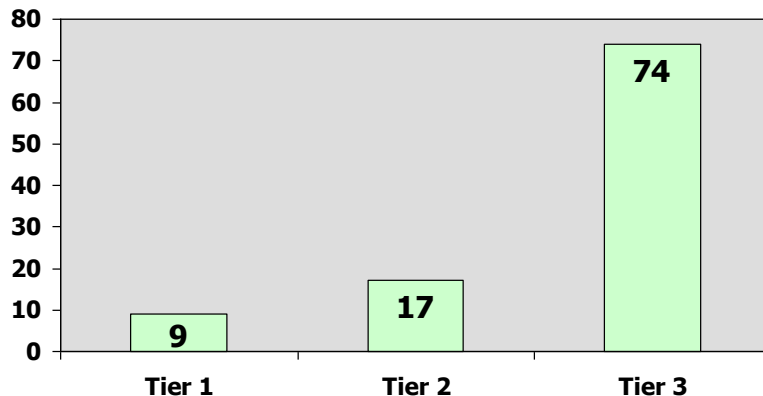
Senior mgmt (RPO) decides whether work may begin

Regulatory Policy Officer (RPO) approves commencement

OPEI manages the monthly tiering process

Core Offices (OPEI, OECA, OGC, ORD) participate in all Tier 1 and 2 actions

Average Number of Tiered Actions for all AA-ships
Per Year, 2005-2008



■ Tier 1: Administrator's Priorities

- Active and ongoing involvement by AO
- Complex, precedent-setting, controversial
- Formal workgroup w/ core offices

■ Tier 2: Cross-Agency Actions

- Need extensive cross-media or cross-Agency involvement
- Formal workgroup w/ core offices

■ Tier 3: Lead Office Delegation

- Actions of a technical nature or single media
- No formal cross-Agency workgroup

The ADP

- Analytic Blueprint / Early Guidance -

plan

Analytic Blueprint / Early Guidance

The work plan

Senior mgmt
decides direction
for the action

- Outlines plans for:
 - Stakeholder outreach & consultation
 - Scientific analysis
 - Economic analysis
 - Legal analysis
 - Implementation, enforcement, & compliance analysis
- Gets workgroup members on the same page
- Solicits early guidance from senior management
- Sets work schedule
- Identifies resource needs

The ADP

- Analysis / Consultation -

analyze

Analysis / Consultation

Workgroup
analyzes &
consults on action
as required by
statutes and EOs

- Identifies data needs
- Seeks to understand stakeholder needs and concerns
- Identifies opportunities for considering & addressing potential disproportionate impacts
 - Children health effects
 - Environmental Justice
- Develops options
 - Regulatory or voluntary approach?
 - Uniform standard or market-based approach?
 - Costs/benefits of each
 - Feasibility of each

The ADP

- Options Selection -

evaluate

Options Selection

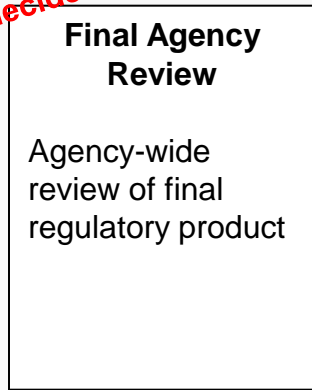
Senior mgmt
decides which
option(s) to pursue

- Options are presented to senior managers from participating offices
- Managers may:
 - Select an option presented
 - Request additional analysis or data
 - Ask for additional options

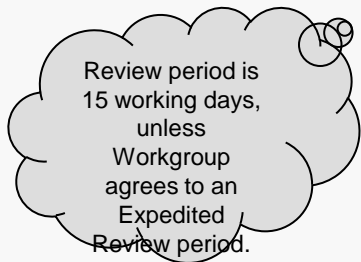
The ADP

- Final Agency Review (FAR) -

decide



- Final Agency-wide review of action package:
 - Final draft of the document
 - If a rule, includes preamble where EPA addresses statutory and executive order assessments, and the regulatory text
 - Supporting analytic/technical documents (e.g., economic analysis, ICR, etc.)
 - Communication materials
- Tier 1 & 2 FAR Meetings are chaired by OPEI
- Each participating office gives their position in writing:
 - Concur
 - Concur with comments
 - Non-concur



The ADP

- OMB Review -

collaborate

OMB Review

(only “significant” actions)

If required, OMB and other relevant agencies review the action

- Executive Order (EO) 12866 gives OMB the authority to review significant regulatory actions, defined as actions that are likely to:
 - Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
 - Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
 - Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
 - Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the EO.
- *Regulatory action* is any substantive action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking
 - According to OMB, this includes “**any policy document of general applicability and future effect**, which the agency intends to have the force and effect of law, such as guidance, funding notices, manuals, implementation strategies, or other public announcements, designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.”
- 80% of EPA actions reviewed by OMB are reviewed because of “novel legal or policy” criteria

Review period is generally 90 calendar days, 10 working day review period for ANPRMs

The ADP

- Signature & Publication -

Signature

Appropriate senior
mgmt signs action

- An action is typically considered complete when the Administrator (or delegate) signs it
- As applicable, the action is then
 - published in the *Federal Register*
 - Submitted to Congress (and GAO)
 - Released to public
- Other communication methods, as well:
 - Press release
 - Web posting
 - Rulemaking Gateway
 - Other online tools...

communicate

FR Publishing

Action published in
the *Federal Register*

If not complete with the action, return to the “planning” step and repeat applicable process steps to develop the final action.

The ADP

- Opportunities for Considering Technical Standards -

- ☐ Develop the Work Plan.
 - ☐ Could the action involve any technical standards?
 - ☐ Plan for identifying & considering voluntary consensus standards (VCS)?
- ☐ Analyze & evaluate the issue, options and related impacts.
 - ☐ Consider applicability of technical standards and availability of VCS.
 - ☐ What are the related options and changes in the impacts.
- ☐ Present options to the decision-makers.
 - ☐ Is the relationship and use of VCS or other standards clear.
 - ☐ What are the impacts?
- ☐ Collaborate across agencies and with stakeholders.
 - ☐ Help in identifying and considering potentially applicable VCS or other standards.
 - ☐ Participate in development of new or revisions to VCS.
- ☐ Communicate what is proposed or being finalized.
 - ☐ Clearly describe what we did and why.

The ADP

- Oversight & Management in EPA -

- The Regulatory Steering Committee (RSC) acts as the steward for EPA's ADP by ensuring a consistent, thoughtful, collaborative approach to cross-cutting regulatory and non-regulatory policy development.
 - Develops and issues guidance on the ADP;
 - Implements the tiering process;
 - Ensures that rules comply with applicable statutes and EO requirements;
 - Ensures that significant cross-program process issues are resolved or elevated to top management; and
 - Advises the Administrator on issues related to action development.
- Each AA and RA has designated an RSC representative.
- OPEI leads the Agency's internal implementation of the ADP.

Resources

- Additional Guidance and Information is available in the Agency's ADP Library:

<http://intranet.epa.gov/adplibrary/>